

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

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JOHN PRICE,  
*Individually and for others similarly situated,*

Plaintiff,

vs.

Case No. 2:20-cv-00316-KWR-GJF

DEVON ENERGY CORPORATION,

Defendant.

**ORDER TO SHOW CAUSE**

**THIS MATTER** is before the Court on Plaintiff's unopposed Motion for Settlement Approval.

The parties apparently seek court approval of a settlement of both FLSA claims and state law class action claims under Rule 23. The parties seek final judicial approval of the settlement agreement before notice to the opt-in class members is given. Once the Court approves the settlement agreement, the parties propose giving notice to the class members to opt in.

Generally, the Court takes the position that neither a fairness hearing nor judicial approval of a settlement of an FLSA class action claim is required. *Hawthorn v. Fiesta Flooring, LLC*, No. 1:19-CV-00019 WJ/SCY, 2020 WL 3085921, at \*1 (D.N.M. June 10, 2020). However, when courts do approve FLSA settlement agreements, they generally require that opt-in class members be given notice and an opportunity to object. *See, e.g., Ostrander v. Customer Eng'g Servs., LLC*, No. 15-CV-01476-PAB-MEH, 2018 WL 1152265, at \*2 (D. Colo. Mar. 5, 2018) (citing cases). Furthermore, this case includes a class action claim pursuant to Fed. R. Civ. P. 23, which in some circumstances may require a fairness hearing and notice.

It appears that notice was not given to the opt-in class members. A class has not yet been certified in this case. Under these circumstances, notice prior to approval of the settlement may not be necessary because the putative class members can opt out. If that is the parties' position, they should give some argument or case law in support of that position.

The Court orders the parties to show whether the notice and settlement procedure in this case is adequate. The parties should indicate whether notice was given to the class members before the parties filed this motion for final settlement approval, and if not, whether notice to the class members is required before the Court approves the settlement. The parties should also indicate whether a fairness hearing is required. **The parties should file this response within fourteen (14) days of the entry of this order.**

**IT IS SO ORDERED.**

  
**KEA W. RIGGS**  
**UNITED STATES DISTRICT JUDGE**